

EXHIBIT 1

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ALL NIPPON AIRWAYS COMPANY, LTD.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 ALL NIPPON AIRWAYS COMPANY,) LTD.,

15 Plaintiff,

16 vs.

17 UNITED AIR LINES, INC.,

18 Defendant.

19 AND RELATED COUNTER-CLAIM

Case No. C07-03422 EDL

DECLARATION OF
MARSHALL S. TURNER
IN OPPOSITION TO
DEFENDANT'S
MOTION TO COMPEL

Hearing Date: January 30, 2008
Hearing Time: 2:00 p.m.
Hearing Place: Courtroom of Hon.
Elizabeth D. Laporte

20
21 **DECLARATION OF MARSHALL S. TURNER**

22 Marshall S. Turner, being duly sworn, deposes and says:

23 1. I am an attorney and a member of the law firm of Condon & Forsyth LLP,
24 attorneys for plaintiff All Nippon Airways Co., Ltd. ("ANA") in the above-
25 captioned matter. I make this declaration in Opposition to Defendant's Motion to
26 Compel Discovery and for Additional Time to Depose Witnesses.

27 2. On July 24, 2007, UAL served ANA with a Notice of Taking Video
28 Depositions and document requests for the three ANA pilots on board Flight

1 NH007 at the time of the Accident, which noticed the depositions for San
2 Francisco. Attached hereto as Exhibit A is a true and correct copy of the
3 deposition notice.

4 3. On September 12, 2007, UAL served ANA with an Amended Notice of
5 Taking Video Depositions and document requests for these same witnesses, which
6 noticed the depositions for Los Angeles. Attached hereto as Exhibit B is a true and
7 correct copy of the deposition notice.

8 4. On September 27, 2007, UAL served ANA with a Second Amended Notice
9 of Taking Video Depositions and document requests for these same witnesses.
10 Attached hereto as Exhibit C is a true and correct copy of the deposition notice.

11 5. On November 16, 2007, UAL served ANA with a Third Amended Notice
12 of Taking Video Depositions and document requests for these same witnesses.
13 Attached hereto as Exhibit D is a true and correct copy of the deposition notice.

14 On November 19, 2007, UAL served ANA with a Fourth Amended Notice of
15 Taking Video Depositions and document requests for these same witnesses.
16 Attached hereto as Exhibit E is a true and correct copy of the Fourth Amended
17 deposition notice. These November notices contained additional document
18 requests that were not requested in the previous notices. I did not receive either of
19 these notices until November 19, 2007, at which time I transmitted them to ANA's
20 legal department. However, I was unable to provide the new notices to the
21 witnesses until the day before each of their respective depositions.

22 6. The November document requests were directed to the witnesses and, as
23 each Notice states, "Deponent(s) are requested to bring with them to the deposition
24 the documents requested on the attached Exhibit A."

25 7. On October 12, 2007, UAL served ANA with its First Request to Produce.
26 Attached hereto as Exhibit F is a true and correct copy of UAL's Request. On
27 November 13, 2007, ANA served UAL with its Response to UAL's First Request
28

1 to Produce and produced documents in response thereto. Attached hereto as
2 Exhibit G is a true and correct copy of ANA's Response to UAL's First Request to
3 Produce. On December 13, 2007, ANA served UAL with its Supplemental
4 Response to UAL's First Request to Produce and produced additional documents.
5 Attached hereto as Exhibit H is a true and correct copy of ANA's Supplemental
6 Response.

7 8. The depositions of ANA's flight crew were conducted on November 27, 28
8 and 29, 2007. Attached hereto as Exhibit I is a true and correct copy of the
9 deposition transcript of Eishin Yamaguchi. Attached hereto as Exhibit J is a true
10 and correct copy of the deposition transcript of Yusuke Nishiguchi. Attached
11 hereto as Exhibit K is a true and correct copy of the deposition transcript of Teruo
12 Usui.

13 9. I conducted all discussions with UAL on behalf of ANA concerning the
14 scheduling of depositions of ANA's flight crew. Although we discussed the
15 possibility that it might be easier to schedule the depositions of the three pilots on
16 consecutive days, if Los Angeles were an option, I never requested or agreed that
17 the depositions take place in Los Angeles.

18 10. In his letter of July 17, 2007, UAL's counsel Scott R. Torpey states, "The
19 depositions would take place at a location in San Francisco." Attached hereto as
20 Exhibit L is a true and correct copy of Torpey's July 17, 2007 letter. On July 24,
21 2007, UAL noticed the depositions for San Francisco. See Exhibit A.

22 11. In my letters of August 7, 2007 and August 30, 2007, I advised UAL's
23 counsel that ANA expected to be able to produce the witnesses in San Francisco or
24 Los Angeles. Attached hereto as Exhibit M are true and correct copies of my
25 August 7, 2007 and August 30, 2007 letters. In my letter of September 7, 2007, I
26 again offered to produce at least two witnesses in the United States "in the same
27 city," but did not request that such city be Los Angeles. Attached hereto as Exhibit
28

1 N is a true and correct copy of my September 7, 2007 letter.

2 12. In his letter of September 12, 2007, Torpey advised that he had chosen to
3 notice the depositions for Los Angeles, but also offered that having the depositions
4 in San Francisco would be “no problem.” Attached hereto as Exhibit O is a true
5 and correct copy of Torpey’s September 12, 2007 letter.

6 13. In my letter of November 7, 2007, I confirmed that the depositions would
7 take place in San Francisco. Attached hereto as Exhibit P is a true and correct
8 copy of my November 7, 2007 letter. In an email of November 19, 2007 I again
9 confirmed that the pilot depositions would take place in San Francisco. In his
10 email of November 19, 2007, Torpey admitted to having seen my letter of
11 November 7, 2007, but stated, “As for your November 7 letter, I assumed you
12 meant LA.” Attached hereto as Exhibit Q is a true and correct copy of my
13 exchanges of emails with Torpey on November 19, 2007.

14 14. In response to UAL’s request for “ANA Pilot Files” in its deposition
15 notices, ANA’s flight crew produced at their depositions all documents in their
16 possession responsive to this request. Each pilot had his certification documents
17 and training record. It should be noted that Mr. Usui was never requested to
18 produce his training record during his deposition. Accordingly, only his aviation
19 certification documents were produced. Attached hereto as Exhibit R are true and
20 correct copies of each pilot’s certification documents and training record produced
21 at their depositions. Certain portions of each pilot’s training record have been
22 redacted pursuant to Japan’s Act on the Protection of Personal Information, which
23 prohibits the disclosure of personal information. Attached hereto as Exhibit S is a
24 true and correct copy of Japan’s Act on the Protection of Personal Information.

25 15. UAL’s request for “ANA Operations Manual” was not included until its
26 final two deposition notices, which were received only eight days before
27 depositions and three days before the Thanksgiving break. See Exhibits A-E.

1 Given the shortage of time, each pilot did not see the latest notice request until the
2 day before his respective deposition. In any event, responsive documents are
3 proprietary company documents that the pilots do not maintain under their personal
4 control. Nonetheless, the witnesses were able to obtain the section of this
5 document that was relevant to this litigation from ANA's legal department and
6 produced same at their depositions.

7 16. With respect to UAL's request for "Publications Required To Be On
8 Board" and "Routing" documents, the witnesses are not in possession or control of
9 such documents. However, they were able to provide the relevant Jeppesen Charts
10 that were the only routing documents relevant to the taxiing of the subject Aircraft.
11 Attached hereto as Exhibit Z is a true and correct copy of the relevant Jeppesen
12 Charts that had previously been produced in September 2007 in ANA's Initial
13 Disclosure as Bates Nos. ANA 001067-001070.

14 17. In UAL's Request for Production, No. 5, UAL requests the recording from
15 the Cockpit Voice Recorder ("CVR") that was in ANA's aircraft on the date of the
16 accident, "reflecting all conversation between the ANA crew and United ramp
17 control, air traffic control, ground personnel and/or between the ANA pilots." In
18 its Supplemental Response, ANA directed UAL to the statutes prohibiting
19 discovery of the CVR recording. See Exhibit H attached hereto.

20 18. The recordings reflecting conversation between the ANA flight crew and
21 United Ramp Control and conversation between the ANA flight crew and air
22 traffic control have already been produced by ANA under Bates No. ANA 001134.
23 There was no conversation between the ANA flight crew and ground personnel
24 while the ANA aircraft was taxiing. The conversations between the ANA pilots in
25 the cockpit are reflected in the statements provided by each member of the flight
26 crew immediately following the Accident. Attached hereto as Exhibit T are true
27 and correct copies of ANA's flight crew's statements.
28

1 19. ANA preserved its CVR after the Accident and submitted its CVR to the
2 National Transportation Safety Board ("NTSB"), who found that it "contained the
3 most recent two hours of the flight operation" in fair to excellent condition, but
4 concluded that "no data could contribute to determining the probable cause.
5 Therefore, no transcript was prepared." Attached hereto as Exhibit U is a true and
6 correct copy of the NTSB Group Chairman's Factual Report concerning ANA's
7 CVR.

8 20. UAL failed to preserve its CVR data as the NTSB determined that "The
9 audio was consistent with the CVR being overwritten by subsequent events."
10 Attached hereto as Exhibit V is a true and correct copy of the NTSB Specialist's
11 Factual Report on UAL's CVR.

12 21. In its Cockpit Voice Recorder Handbook for Aviation Accident
13 Investigations, the NTSB notes that CVR recordings "contain highly sensitive
14 information" and that NTSB staff and Members are "bound by Federal CVR
15 nondisclosure laws" (referring to 49 U.S.C. § 1114). Attached hereto as Exhibit
16 AA is a true and correct copy of the relevant pages of the NTSB Cockpit Voice
17 Recorder Handbook for Aviation Accident Investigations. See § 3.1.

18 22. In UAL's Request for Production No. 7, UAL requests documents in
19 connection with the Standard Ground Handling Agreement ("SGHA") that was in
20 effect on the date of the Accident. ANA responded to this request and produced
21 the responsive documents in its possession. See exchanges of emails attached
22 hereto as Exhibit W which are true and correct copies of the documents produced
23 by ANA in response to this request as Bates Nos. ANA 001336-001346.

24 23. In ANA's First Set of Document Requests to UAL, ANA requested similar
25 documents from UAL with respect to the SGHA. Attached hereto as Exhibit X is a
26 true and correct copy of UAL's Response to ANA's First Set of Document
27 Requests to UAL. UAL has not produced a single document in response to ANA's
28

1 Requests Nos. 20 and 30 through 40 which was due on December 18, 2007.

2 24. UAL's Request for Production No. 10 seeks "ANA policy relative to ANA
3 pilots clearing potential conflicts with other aircraft prior to or during taxi." See
4 Exhibit F. ANA's flight crew testified at their depositions that they are not aware
5 of any such policy. See ANA's pilots' deposition transcripts attached hereto as
6 Exhibit I, 67:11-18; Exhibit J, 41:19-42:3; Exhibit K, 34:22-25. ANA is not aware
7 of any document responsive to this request.

8 25. UAL prays to have this Court grant it additional time to depose ANA's
9 flight crew beyond the seven hours provided by the Federal Rules of Civil
10 Procedure Rule 30(d)(1). UAL Motion, pages 15-17.

11 26. UAL argues that it will need additional time to question these witnesses
12 because ANA withheld documents. UAL Motion, page 15. In accordance with the
13 foregoing, ANA's witnesses produced all responsive documents in their possession
14 at their depositions and ANA has appropriately responded to all of UAL's
15 document requests. UAL chose not to question the witnesses at all with respect to
16 many of the documents.

17 27. UAL argues that its deposition time was shortened by the use of a
18 translator when "all three pilots fluently speak and understand English." UAL
19 Motion, page 17." UAL questioned each witness with respect to his English
20 language proficiency and each witness indicated the need for the translator. See
21 deposition transcripts at Exhibit I, 11:22-25, 16:15-19; Exhibit J, 5:24-6:5; Exhibit
22 K, 32:6-9.

23 28. UAL argues that ANA unilaterally and prematurely terminated Mr.
24 Yamaguchi's deposition. UAL Motion, page 16. However, ANA offered to allow
25 UAL to continue, even though UAL's counsel had repeated numerous questions
26 many times over, and UAL refused. Exhibit I, 137:17-20.

27 29. UAL moves for additional time to depose ANA's flight crew, but UAL
28


1 failed to use the time allotted and available for the depositions of Mr. Nishiguchi
 2 and Mr. Usui. UAL's counsel elected to conclude the deposition of Mr.
 3 Nishiguchi after five hours and twenty-five minutes of on-the-record time and
 4 stated, "I don't have any other questions." See Exhibit J, 114:23-24. Attached
 5 hereto as Exhibit Y is a true and correct copy of the record of running time for each
 6 deposition. UAL's counsel terminated Mr. Usui's deposition after five hours and
 7 forty-one minutes of on-the-record time and stated, "I don't have any further
 8 questions." Exhibit Y; and Exhibit K, 107:22-23.

9 30. UAL consumed considerable time during these depositions repeatedly
 10 asking the same questions over and over again. See Exhibit I, 78:24-81:17, 83:1-
 11 90:5, 119:12-122:21; Exhibit J, 42:9-56:23; and Exhibit K, 35:1-52:6.

12 31. In accordance with the foregoing and ANA's Brief in Opposition to
 13 Defendant's Motion to Compel, UAL's arguments are without merit and should be
 14 denied in their entirety.

15 I declare under penalty of perjury under the laws of the United States of
 16 America that the foregoing is true and correct.

17 Executed this 9th day of January, 2008, at New York, New York.

18
 19 
 20 Marshall S. Turner

21 Sworn to before me this
 22 9th day of January, 2008

23 
 24 Notary Public

25 **Timothy H Eskridge**
 26 **Notary Public State of N.Y.**
 27 **02ES6121835**
 28 **Qualified in New York County**
Commission Expires January 31 2009